

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

ELVIN GONZALEZ MELENDEZ

Plaintiffs,

CIVIL NO. 04-1067(DRD)

v.

K-MART CORPORATION,

Defendants

ORDER

Pending before the Court is plaintiff's *Motion Requesting Sanctions for Defendant's Contemptuous [sic] Conduct Pursuant to Fed.R.Civ.P. 16(F)*. (Docket No. 37). Plaintiff request the Court to sanction defendant (be it by eliminating its affirmative defenses and/or entering default judgment against it) for its alleged repeated dilatory tactics and contemptuous conduct in the discovery phase of the instant action. K-Mart duly opposed said motion. (Docket No. 38).

Regarding discovery disputes, the Court ordered, on May 25, 2004, the following:

Furthermore, the Court reminds parties that no discovery related motions are to be filed with the Court except by prior exhaustion of Local Rule 26(b). If no agreement is reached by the parties after conducting a Local Rule 26(b) meeting, **then**, the parties are to reach the law clerk assigned to this case via telephone at (787)772-3164. The judge will try and reach the parties within forty-eight (48) hours of their call to resolve the matter (the parties may request a transcript and the judge will issue a Minute of Proceedings as to the issue, the position of the parties and the resolution of the matter). However, if the parties' telephone call has not been answered by the judge **within five (5) days after the call**, only then, will the parties be authorized to file a discovery-related motion with the Court. During all this time the parties are to seriously and maturely examine the discovery-related dispute and attempt to solve the matter. **The Court shall not hesitate to impose sanctions should obstinacy be present.**

Minute, May 25, 2004, Docket No. 25. There is no evidence on record that makes any reference to either of the parties having complied with this order once the discovery dispute arose. Further, Plaintiff failed to even make a showing of having complied with Local Rule 26.

Consequently, Plaintiff's request for sanctions (Docket No. 37) is hereby **DENIED** for failure to comply with the orders set forth by this Court on the Initial Scheduling Conference and for failure to exhaust Local Rule 26.

The timetable set forth by the Court for discovery and motion procedures continues in full force and effect.

IT IS SO ORDERED.

May 31, 2005

S/ Daniel R. Dominguez
DANIEL R. DOMINGUEZ
U.S. DISTRICT JUDGE